



July 26, 2012

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Comments from DSC Chair Phil Isenberg Regarding BDCP Announcement

In response to requests for comments on the BDCP announcement this week by Governor Jerry Brown, US Secretary of Interior Ken Salazar, and NOAA Deputy Administrator Eric Schwaab. These are the views of DSC Chair Phil Isenberg, not those of the Delta Stewardship Council.

(Sacramento) - The announcement by Governor Brown, Secretary Salazar, and Deputy NOAA Administrator Eric Schwaab shed light on federal and state policy on water in California, the Delta ecosystem and efforts to complete the Bay-Delta Conservation Plan, including construction of a new Delta water export facility. The announcement will not end debate over BDCP. Nothing stops Californians from arguing about water.

As a grumpy old guy involved in California's water wars, I thought the announcement, the theatrics surrounding it, and the staff work that backed it up was very, very interesting. Serious public policy people should pay attention.

Listening to the press conference left me with the impression that federal and state adult supervisors had walked into the room and put some boundaries around BDCP. Secretary Salazar said, *"As broken and outdated as California's water system is, we are also closer than ever to forging a lasting and sustainable solution...."* My own 50-year experience in politics and war battles confirms that when angry voices are raised, it usually means something important is about to happen.

BDCP started as an interest-based negotiation, with the strength and weakness of that orientation. Interest group negotiations are strong because agreement helps to ease approval by policy-makers. Interest group negotiations are weak, because participants tend to protect their own interests, not automatically the interest of the people of California. The Governor and Secretary put the larger public interest back into the discussion of BDCP.

There were many interesting things in the announcement.

- **The coequal goals of state and federal law - a more reliable water supply for California,**

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

and a protected, restored and enhanced Delta ecosystem - will be the measures of success for BDCP. This is a very big deal.

- **The proposed new Delta water export tunnel just got a lot smaller.** The size of the underground water pipes pumping capacity has been reduced by 40 percent, from 15,000 cfs to 9,000 cfs. Ditto for the reduction of intakes/pumps from five to three.

Does a smaller project satisfy opponents? No. Those who object to the last 60 years of water exports from the Delta for Central Valley farmers, urban Southern California, and even several key Northern California water districts, continue to do so. Others argue the project is still too big, or that it does not give adequate protection to those who live in or near the Delta. In the large sense, however, a big cut in the size of the project moves BDCP closer to what independent science tells us is required for the Delta ecosystem to improve, and also comes closer to what the benefited water ratepayers may be willing to pay.

- **“Science will now guide how to best restore the ecosystem and how much water can be exported.”** This declaration breaks new ground. Not by saying that science should be involved, but by saying that science will guide water operations as well. Taking a cue from the coequal goals (and the Delta Vision recommendations that preceded it), the BDCP will need a structure where science judges and recommends, and then joins in operating a water and environmental protection system, one that reflects a more modest demand for water taken from the Delta. How independent scientific judgment fits into BDCP’s complicated management system is not yet clear. However, by irreversibly linking available water supply and reasonable efforts to restore the Delta ecosystem, the state and federal officials are cutting new ground in water policy for California.
- **Absolute guarantees of endless amount of ‘new water’ are slipping from the discussion.** This may be the most interesting part of the BDCP announcement. For the entire history of California, people have demanded legal guarantees of water supplies (we also call them “assurances,” or “entitlements”). But if you read all the documents presented this week, it clear that water contractors are not asking BDCP to guarantee a set amount water will be provided - not even a “minimum amount” to be exported (see the Questions and Answers on page 3).

Rumbles have circulated through the water world for many weeks that “guarantees are no longer a pre-condition for BDCP approval.” That was so peculiar that many of us thought it could not be true.

On reflection, this may well qualify as a major change in how California deals with water

supply and water demand. Historically, we have overpromised the total amount of water to be delivered. That was not a big problem when California's population and economy were small and the supply of water ample. Today, our population and economy is very large and the supply of water has remained static. The tension is also greater because of strong public supports for reversing the environmental damage from previous water development.

Is dropping the demand for guaranteed levels of water a way to talk honestly about supply and demand? I sure hope so. The Delta Stewardship Council has wrestled with this problem, and ultimately decided that the best way to say it "matches the demands for water to the available supply - not the other way around." The announcement this week sounds very much like this approach.

Some lingering questions for BDCP

The battle over BDCP will continue for many months, as Governor Brown indicated. Here are some key questions essential to achieving a successful BDCP, which could be improved if BDCP incorporated the policy recommendations of the landmark study by the National Research Council (March 2012), National Research Council, *Sustainable Water and Environmental Management in the California Bay-Delta* (March 29, 2012).¹

1. Will the pledge to improve water management statewide (i.e., conservation and water system efficiency) be a mandatory part of BDCP, or only an option? Will BDCP help meet the statutory mandate in the Delta Reform Act of 2009 to "...*reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency?*"
2. Will the BDCP biological goals and objectives include new updated Delta water quality flows to be adopted by the State Water Resources Control Board by mid-2014?
3. How will the changed BDCP ensure that independent, neutral science is involved in both water supply and ecosystem decisions, and will that involvement of science also be applied to other non-BDCP federal and state plans and programs?
4. Will BDCP shift its focus from a species-by-species evaluation under the Endangered Species Act, and move toward restoration of the Delta ecosystem as a whole? The latter approach is consistent with BDCP's current agreement and legal requirements to satisfy California and federal environmental law. The best available scientific information shows the interconnection of the health of fish species, the loss of habitat and the channelization of water, changes in water supply and flows, and the presence of "other stressors." The National Research Council prudently advised us to be cautious about expecting instant improvement in either water supply or the Delta ecosystem even if we

solve one problem, or two or many.

5. BDCP supports the concept of “user pays,” but the announcement today noted, *“Habitat and other conservation measures in the BDCP would be financed in part by the contractors, but would mostly be paid by the state over a period of 40 years, with likely additional investment by the federal government through existing programs.”* Is it possible to comply with federal and state laws that deal with environmental and endangered species - and not identify a secure source of funding?
6. The new approach to BDCP pledges “continued investment in the Delta for flood protection, community development, and biological restoration.” That is positive, but how much money, from whom, and for what and when?

All of us should expect to see months of intense arguments about water, economic interests, regional differences, the environment, local control and a near-endless list of issues. The public debate is likely to sound very familiar.

Some months ago I gave separate speeches to three groups with different views on California’s water and environmental problems. Reflecting on what I do as Chair of the Delta Stewardship Council, I told them this:

My normal workweek includes endless meetings with staff and stakeholders, occasional press queries, and then public events, including speeches like this. My time is consumed with Delta Stewardship Council meetings, where water districts, government agencies, environmentalists, business and agriculture representatives, and the public at large, come to say what they want to say. After all these years, I recognize most of these people, and have supported their views or opposed them, at various points in my life.

In public, most of the speakers say pretty much the same thing. The most common refrain is “me, and my interest first.” However, when I talk to these people in private, they say things differently. In private, people are more candid, flexible and pragmatic. This difference between public posturing and reasonable private conversation irritates me. I occasionally demand they say in public what they tell me in private. Some smile, but mostly they glower or stare back without responding.

This is the American way to negotiate: demand more than you want or need, in the hope of getting something better than you expect. Ask tough questions of your opponents, but duck the ones that come your way. Offer to compromise 30 minutes before a final decision. This pattern is not a great way to make public policy.

Every time I give a speech like this, someone comes up and asks, “Why are you so

cynical?” Actually, I consider myself optimistic, albeit with an appetite for uncomfortable questions, and a sense of history.

This week, federal and state officials stepped forward to change the shape and direction of the BDCP. In spite of their very interesting and important statements and policy changes, I am certain that much of the debate to follow will be loud and confusing. I would guess that most of the voices say one thing in public, and say other things in private. Governor Brown wisely advised the press conference that there is a lot of detailed work before BDCP is complete.

This week I rate myself a slightly more optimistic grumpy old water guy. When BDCP is finished, the Delta Stewardship Council will likely review the decision by the Department of Fish and Game that it meets the tests of law. When that happens, I will kick the tires of the BDCP to see if it complies with federal and state law. I expect to ask questions that seem relevant, clarify what BDCP is or is not doing, and listen carefully to those who will tell the Council how we should act on the proposal.

Recently, one of my colleagues reminded me that the Delta Reform Act of 2009 directed the Council to adopt a Delta Plan --- a comprehensive plan for water and ecosystem issues affecting the Delta. The Delta Plan is the policy framework for California, and BDCP is the plumbing. Science must guide how we adaptively manage the entire enterprise. There is no immutable articulation of all policies or projects which will develop over years to come. Nor should there be a rigidly defined solution to which all facts must bow. Useful words to remember.

The Governor, Secretary and Deputy Administrator put some meat on the bones of BDCP this week. No final decisions yet, but this messy and important process is moving forward. That is good news.

Note: Isenberg has chaired the Delta Stewardship Council since 2010. He previously chaired the Delta Vision Blue Ribbon Task Force (2007-2008).

Copies of some speeches are at: <http://deltacouncil.ca.gov/chairs-page>.

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